A

DR MOHD YUSOF ISMAIL

v.

HJ ISMAIL MOHD NOR

B

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
RAMLY ALI JCA
T SELVENTHIRANATHAN JCA
[CIVIL APPEAL NO: W-03(IM)-235-2008]

C

29 OCTOBER 2010

DAMAGES: *General damages - Quantification - Defamation - Whether general damages in a defamation action should not be quantified and should instead be left at large - Whether decision of Court of Appeal in Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals needs to be reviewed*

D

TORT: *Damages - Defamation - Quantification - Whether general damages in a defamation action should not be quantified and should instead be left at large - Whether decision of Court of Appeal in Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals needs to be reviewed*

E

The instant appeal raised a question of law concerning the quantification of general damages in the pleading for an action founded on defamation. The defendant had quantified general damages in the sum of RM1 million in his counterclaim. Counsel for both the plaintiff and the defendant submitted that general damages in a defamation action should not be quantified and should instead be left at large. Both of them implored the court to review the Court of Appeal decision of *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals.*

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Held (allowing the appeal, to the extent that the quantification of RM1 million for general damages in the defendant's counterclaim be deleted)

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Per Low Hop Bing JCA delivering the judgment of the court:

(1) *Skrine & Co (supra)* has left the quantification of general damages very much to the parties. General damages may be quantified, in which case, a ceiling is fixed for the compensation to be awarded. Parties may also keep general damages at large so that the court may subsequently embark on

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an exercise to assess damages. In the instant appeal, both the plaintiff and the defendant had agreed in their respective submissions that general damages should not have been pleaded. They were, of course, at liberty to do so. *Skrine & Co (supra)* had clearly explained this. In the circumstances, the question of reviewing the judgment of this court in *Skrine & Co (supra)* did not arise at all. *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals* (foll). (paras 11 & 12)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan semasa menimbulkan soalan undang-undang berhubungan dengan kuantifikasi gantirugi am dalam pliding untuk suatu tindakan berasaskan fitnah. Defendan telah menyatakan kuantiti gantirugi am dalam jumlah RM1 juta dalam tuntutan balasnya. Peguam untuk kedua-dua plaintif dan defendan menghujah bahawa gantirugi am dalam suatu tindakan fitnah tidak seharusnya dinyatakan kuantiti dan sepatutnya dibiarkan bebas. Kedua-dua mereka meminta mahkamah untuk mengkaji semula keputusan Mahkamah Rayuan dalam *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals.*

Diputuskan (membenarkan rayuan, setakat kuantifikasi RM1 juta bagi gantirugi am di dalam tuntutan balas defendan dibatalkan)
Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) *Skrine & Co (supra)* telah membiarkan kuantifikasi gantirugi am kepada pihak-pihak. Gantirugi am boleh dinyatakan kuantitinya, dan dengan itu, suatu tahap akan ditetapkan bagi pampasan yang diawardkan. Pihak-pihak juga boleh membiarkan gantirugi bebas supaya mahkamah boleh kemudiannya melaksanakan pentafsiran gantirugi. Dalam rayuan semasa, kedua-dua plaintif dan defendan telah bersetuju dalam hujahan mereka masing-masing bahawa gantirugi am tidak seharusnya diplidkan. Mereka adalah, sememangnya, bebas berbuat demikian. *Skrine & Co (supra)* telah menerangkannya dengan jelas. Dalam keadaan, soalan mengkaji semula penghakiman mahkamah ini dalam *Skrine & Co (supra)* tidak timbul langsung. *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals* (diikuti).

Case(s) referred to:
British Transport Commission v. Gourley [1956] AC 185 ***(refd)***
Liew Yew Thiam & Ors v. Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 CA ***(refd)***
Raja Zam-Zam v. Vaithiyanathan [1965] 1 LNS 145 HC ***(refd)***
Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals [1998] 3 CLJ 432 CA ***(foll)***
Tham Kwa Chin v. Choong Hoong Sum [1954] 1 LNS 118 HC ***(refd)***

Other source(s) referred to:
Atkin's Court Forms, 2nd edn, vol 32, para 33
Carter-Ruck on Libel and Slander, 4th edn, Butterworths London 1992, pp 166-171

For the appellant - Nantha Balan; M/s Zul Rafique & Partners
For the respondent - Jefri Jaafar; M/s Hadmin Zahar & Rohaine Sharifudin

[Appeal from High Court, Kuala Lumpur; Suit No: S3-23-16-2007]

Reported by Suresh Nathan

JUDGMENT

Low Hop Bing JCA:

Appeal: Question For Determination

[1] On 19 April 2010, learned counsel for both the appellant and the respondent raised a common question of law for our determination in the instant appeal. The question concerns the quantification of general damages in the pleading for an action founded on defamation.

Defendant's Counterclaim

[2] In para. 47(b) of the counterclaim, the defendant had quantified damages in the sum of RM1 million.

General Damages In Defamation Action

[3] In their respective submissions, Mr Nantha Balan, learned counsel for the plaintiff, and Mr Jefri bin Jaafar for the defendant concurred that general damages in a defamation action should not be quantified and should instead be left at large. Both of them implored the court to review *Skrine & Co v. MBF Capital Bhd & Anor & Other Appeals* [1998] 3 CLJ 432 CA. They referred to:

(1) *Carter-Ruck on Libel and Slander*, 4th edn, Butterworths London 1992 pp. 166-171; A

(2) *Atkin's Court Forms*, 2nd edn, vol 32 London para 33;

(3) *Skrine & Co, supra*; B

(4) *Liew Yew Thiam & Ors v. Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385;

(5) *Tham Kwa Chin v. Choong Hoong Sum* [1954] 1 LNS 118;

(6) *Raja Zam-Zam v. Vaithiyanathan* [1965] 1 LNS 145; and C

(7) *British Transport Commission v. Gourley* [1956] AC 185.

[4] The learned trial judge's grounds of judgment apparently did not address this particular issue. D

[5] In view of the concurrent submissions, on 19 April 2010, we held that general damages sought in para 47(b) of the defendant's counterclaim founded on defamation should not be quantified but should instead be left at large. We therefore ordered that the quantification of general damages (in that defendant's counterclaim in the sum of RM1 million) be deleted. Both the learned counsel had requested for our grounds of judgment. We now give our grounds. E

[6] The proposition that general damages sought in a defamation action should be left at large may be found in Carter-Ruck on *Libel and Slander, supra*, in the following passage: F

> An action for defamation is essentially an action to compensate a person for the harm done to his reputation. In all actions for libel and in some actions for slander the law presumes that the plaintiff has suffered harm and in these actions, usually described as being actionable *per se*, the actual sum to be awarded – the damages – are said to be 'at large'. G

[7] *Atkin's Court Form, supra*, para. 33 categorically states as follows: H

> General damages. Particulars of general damages, ie, unliquidated or unascertained damages, are not required specifically to be pleaded. I

[8] In *Tham Kwa Chin, supra*, the plaintiff quantified general damages in the sum of $15,000 in the statement of claim. Spenser Wilkinson J said:

> I would point out that it is neither necessary nor in accordance with the best traditions of pleadings to claim any specified sum in a Statement of Claim when claiming general damages. Particulars with figures for special damages have, of course, to be given but for general damages the proper prayer is "The plaintiff claims damages".

[9] Where general damages was quantified, eg, as in *Raja Zam Zam, supra*, Raja Azlan Shah J (now HRH The Sultan of Perak) observed that that was a peculiar way of claiming general damages. It is not the present practice to specify the amount of general damages in the pleadings. The learned judge applied the *dicta* of Lord Goddard in *British Transport Commission v. Gourley* [1956] AC 185:

> In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as special damage which has to be specifically pleaded and proved. Secondly, there is general damages which the law implies and which is not specifically pleaded.

[10] The issue of quantifying general damages, with particular reference to a claim founded on a defamation action, came up for consideration by this court in *Skrine & Co, supra*. Gopal Sri Ram JCA (later FCJ) stated:

> We are, therefore, unable to agree with Raja Aziz's submission that there was once a practice of quantifying general damages but that has since fallen into disuse and it would be wrong to reinstate it. In our judgment, there is no rule of practice going either way. A plaintiff in a defamation action may quantify his damages, in which event he runs the risk of not receiving anything more than the amount stipulated in his writ. However, he is equally at liberty not to specify a sum in which event arguments may be addressed in the usual way at the conclusion of the trial upon that issue.

[11] In our respectful view, the above passage has left the quantification of general damages very much to the parties. General damages may be quantified, in which case, a ceiling is fixed for the compensation to be awarded. Parties may also keep general damages at large so that the court may subsequently embark on an exercise to assess damages.

[12] In the instant appeal, both the plaintiff and the defendant have agreed in their respective submissions that general damages should not have been pleaded. They are of course at liberty to do so. This has been clearly explained by this court in *Skrine & Co, supra*. In the circumstances, the question of reviewing the judgment of this court in *Skrine & Co, supra*, does not arise at all.

Conclusion

[13] In view of the concurrent submissions, we ordered that the quantification of RM1 million for general damages in para. 47(b) of the defendant's counterclaim be deleted. I should now read "general damages" *simpliciter*. The appeal is allowed to that extent. Deposit was ordered to be refunded to the plaintiff. No order as to costs.